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**CONTINGENCY CONTRACTS AND ITS LEGAL IMPLICATIONS****Introduction**

The Indian contract Act, 1872 regulates the laws relating to various contractual liabilities. It is based on English Common law. It may be divided into two parts: The General principals which are covered under section 1 to 75 and the special contract law which deals with Indemnity, Guarantee, bailment, pledge and Agency.

According to Section 31 of Indian Contract Act, 1872, “A contingent contract is contract to do or not to do something, if some event, collateral to such contract, does or does not happen.”

From above definition, it can be inferred that contingent contract are type of conditional contract whose nature of such contracts are essentially uncertain. Therefore, all the conditional contract may not be contingent contract. For example, if A’s promise to pay B Rs. 2000 on C’s death is principally a conditional contract, but since C’s death is a certain event, it cannot be considered a contingent contract. However, a contract to pay a sum of money on C’s death by fire is a contingent contract because it involves the essential element of uncertainty.

Such principle form the basis of execution of insurances in India.

Therefore, a contingent contract involves two important fundamentals:

- Execution of contract must depend on some future event
- The occurrence of such event must be uncertain but not impossible

The contingent contracts are specifically mentioned under the general principals of the contract law. However, they play an important role in enforcement of certain special contracts also. Under the English common law, such contracts are covered under conditional contract.

### **Contingency to be collateral to the main contract**

According to Indian Contract Act, the contingency must be collateral to the main contract. For example, if A contracts with B to sell his goods and pay him the sale proceeds, the selling of the goods here is the main contract and payment of the sale proceeds is contingent on the main contract. This implies two things. A might not be able to sell the goods and if he does he may or may not sell them profitably. Therefore, the latter part of the agreement, that is, to pay B the sale proceed is contingent on the main contract of sale.

While the main contract is in execution, either party must not take any step to make the collateral contract impossible to be performed. Such duty is always implied<sup>1</sup>. And although the collateral contract is contingent on the main contract, either party should be ready for its execution.<sup>2</sup>

The breach of the collateral contract is same as the breach of main contract. However, here the party that breaches the contract has a benefit of doubt as the performance of the collateral contract may not always be possible under all the circumstances. Therefore, the court while assessing the damages, takes into the account the possibility of the execution or non-execution of the collateral promise.

### **Contingent Contracts and Wagering Contracts**

Contingent contracts are often confused with Wagering contracts as they both involve happening of some future elements. However, Indian Contract Act distinguishes between the two. According

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<sup>1</sup> Chitty on Contracts, 28th edn., p. 152, para 2-140.

<sup>2</sup> Motilal v. Nanhelal, AIR 1930 PC 287.

to Section 30 of Indian Contract Act “Agreement by way of wager is void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made.”<sup>3</sup>

Therefore, a wagering contract (S. 30) under Indian Contract Act is absolutely void whereas contingent contracts are valid.

A contingent contract, a future uncertain event is merely collateral to the main contract whereas wagering agreements are solely dependent on the occurrence of the uncertain event.

Wagering agreements are species of Contingent contract. Therefore, all wagering agreements are contingent contracts but all contingent contracts may or may not be wagering agreements.

### **Effect of Contingent contracts**

- There is no duty on either party to perform the contract until the contingency occurs.
- No party can assume that the contingency will indubitably take place as it is uncertain.
- Although, there is no obligation to perform the contract till the contingency, no party can withdraw the contract unilaterally before the occurrence of the uncertain event.

### **Enforcement of contingent contract**

#### **Enforcement of contracts contingent on an event happening (S. 32)**

Contract maybe contingent on occurrence of an event. For example, a contract of fire insurance contingent on happening of such an event independent of act of the parties concerned.

Contracts become void if the happening of an event becomes impossible.

#### **Enforcement of contracts contingent on an event not happening (S. 33)**

When a contract is contingent on not happening of a particular event, it can be enforced as soon as the happening of that event becomes impossible. They cannot be enforced any time before such an event has become impossible and it must also be proved by the party demanding the performance of the contract.

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<sup>3</sup> Exception to horse races and crossword competitions and lottery

For example, A agrees to pay Rs. 2000 to B if C does not sell his goods to D. C sells his goods to E. The contract becomes enforceable as soon as C sells his goods to E.

**When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (S. 34)**

If a future event which decides whether or not the contract will become enforceable is made impossible by the conduct of a particular person, and such person acts in a manner that it makes the contract impossible to be performed, if there is no time specified within which the occurrence of future event should take place, it is deemed impossible if its execution is made impossible for a definite period of time.

For example, if A contracts with B to pay him Rs. 2000 if he marries C while C marries D in meanwhile, the contract will be considered impossible although there exists a possibility that D may die later and contract may once again become enforceable

**When contracts become void, which are contingent on happening of specified event within fixed time (S.35)**

A contingent contract to do or not to do something within a fixed period becomes void on expiration of such period.

For example, A forms an agreement with B to pay him Rs. 2000 if latter marries C within 2 months. The contract becomes void even if B eventually marries C but after 2 months.

**Contract contingent on occurrence of an impossible event (S.36)**

A contract to do an impossible act will always be void. A contingent contract depends on uncertain event but not on impossible events.

For example, if A agrees to deliver B a white horse knowing that the horse is dead at the time of the agreement. Such contract will be void.

**Important Case Laws**

**Shardaprasad v. Sikandar<sup>4</sup>**

The seller defendant undertook to apply for the sanction under tenancy law to the contract of sale of a four anna share in the village. However, he was refused the sanction. The plaintiff demanded

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<sup>4</sup> AIR 1915 Nag 15

the specific performance of the contract. The court held that contract constituted of two parts, First, the application for sanction which was duly fulfilled by the defendant and the second for the sale of shares “if the shares were sanctioned.” Since the sanction could not be obtained and the parties had made no provision for such a circumstance, the second part was contingent on the first and was now impossible to performed.

### **Boppana Venketaratnam v Kamalanara Hanumantha Rai<sup>5</sup>**

A contract for the delivery of certain documents of a case by the plaintiff to the defendant with a promise that the latter would pay the former Rs. 750 if tge suit was compromised and Rs. 3000 if the suit was finished was held to be a contingent contract by the court.

### **Parvathamma v Uma<sup>6</sup>**

The sale of property was dependent on repeal of law relating to fragmentation and consolidation of the land holdings. Such contracts were unenforceable under and were void ab initio. The court held that parties cannot agree on occurrence of such an event, in this case, the annulment of a statute to get over the prohibition of that statute.

## **Application of contingent contracts**

### **Contract of Guarantee**

A contract of guarantee is a tripartite contract between creditor, debtor and the guarantor where the guarantor promises to discharge the liabilities of the debtor in case he is unable to do so. A contract of guarantee involves all the elements of a valid contract. Since, it is uncertain whether or not the debtor will be able to pay the debt, it is a species of contingent contract.

### **Contract of Indemnity**

Contract of Indemnity is similar to but not same as contract of guarantee. Unlike the latter one, contract of indemnity is formed between two parties, the indemnity holder and the indemnifier. The indemnifier promises to compensate the indemnity holder in case, he suffers any loss due to

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<sup>5</sup> AIR 1935 Mad 135

<sup>6</sup> AIR 2011 Kant 58: 2011 (3) KC CR 2345

his own conduct or that of a third party. The occurrence of loss is an uncertain event and therefore, it falls under the category of contingent contracts. All types of insurances are contract of indemnity except Life Insurance.<sup>7</sup>

### **Conclusion**

The contingent contracts under Indian contract Law are treated as conditional contract under English common law. The execution and application of such contracts under both the laws remain more or less the same. Contingent contracts play an important role in supervision of insurances and other special contracts and are an indispensable part of the Indian contract law.

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<sup>7</sup> New India Assurance Co. Ltd v. State Trading Corporation of India, AIR 2007 Guj. 517

